

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY**

**MATTHEW GIBSON,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO.: 5:21-cv-00181  
HONORABLE FRANK W. VOLK**

**LOUISE E. GOLDSTON, individually,  
COUNTY COMMISSION OF RALEIGH  
COUNTY, a political subdivision,  
JEFF MCPEAKE, individually,  
BRIAN WHITE, individually,  
BOBBY STUMP, individually,  
KYLE LUSK, individually,**

**Defendants.**

**DEFENDANTS' RALEIGH COUNTY COMMISSION, JEFF MCPEAKE, BRIAN  
WHITE AND BOBBY STUMP'S MOTION IN LIMINE TO EXCLUDE LAY OPINION  
TESTIMONY**

**NOW COMES** Defendants, Raleigh County Commission, Jeff McPeake, Brian White and Bobby Stump, by counsel, J. Victor Flanagan, Kevin J. Robinson, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and moves this Court, *in limine*, to exclude, bar and/or otherwise prohibit the parties, their witnesses and/or counsel from arguing, testifying or otherwise introducing into evidence lay opinion testimony from any fact witness.

Federal Rule of Evidence 701 explicitly lists the topics upon which lay witnesses may render an opinion. Under the rule, lay witnesses are not allowed to render opinion testimony “based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Fed. Rule. 701(c). During the discovery portion of this case, it appeared to the Defendants that the Plaintiff or Plaintiff’s witnesses may attempt to render opinion testimony regarding medical or other scientific

determinations during trial. Any such testimony should be barred under Fed. Rule. 701.

**WHEREFORE**, this Defendants request that the Court grant Defendants *Motion in Limine* to exclude lay opinion testimony.

**COUNTY COMMISSION OF RALEIGH  
COUNTY, JEFF McPEAKE, BRIAN  
WHITE AND BOBBY STUMP**

**By Counsel,**

/s/ Kevin J. Robinson

J. Victor Flanagan, WV State Bar No. 5254  
Kevin J. Robinson, WV State Bar No. 10181

***PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC***

252 George Street

Beckley, WV 25801

Telephone: (304) 254-9300

Facsimile: (304) 255-5519

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY**

**MATTHEW GIBSON,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO.: 5:21-cv-00181  
HONORABLE FRANK W. VOLK**

**LOUISE E. GOLDSTON, individually,  
COUNTY COMMISSION OF RALEIGH  
COUNTY, a political subdivision,  
JEFF MCPEAKE, individually,  
BRIAN WHITE, individually,  
BOBBY STUMP, individually,  
KYLE LUSK, individually,**

**Defendants.**

**CERTIFICATE OF SERVICE**

The undersigned, counsel of record for Defendants, does hereby certify on this 6th day of June, 2022, that a true copy of the foregoing "**DEFENDANTS' RALEIGH COUNTY COMMISSION, JEFF MCPEAKE, BRIAN WHITE, AND BOBBY STUMP'S MOTION IN LIMINE TO EXCLUDE LAY OPINION TESTIMONY**" was served upon opposing counsel through the Court's CM/ECF filing System and e-mail as follows:

John H. Bryan, Esquire  
Law Office of John H. Bryan  
611 Main St.  
P.O. Box 366  
Union, WV 24983  
[jhb@johnbryanlaw.com](mailto:jhb@johnbryanlaw.com)  
*Counsel for Plaintiff*

Jennifer E. Tully, Esquire  
Adam K. Strider, Esquire  
Bailey & Wyant, PLLC  
500 Virginia Street, East, Suite 600  
P. O. Box 3710  
Charleston, WV 25337-3710  
[jtully@baileywvant.com](mailto:jtully@baileywvant.com)  
[astrider@baileywvant.com](mailto:astrider@baileywvant.com)  
*Counsel for Defendant Louise E. Goldston*

/s/ Kevin J. Robinson

J. Victor Flanagan, WV State Bar No. 5254  
Kevin J. Robinson, WV State Bar No. 10181